IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.15 of 2012

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Appellant : S.M Shaukat Ali, through
Mr. Muhammad Imtiaz Agha, advocate.

Versus

Respondent No.1 : Muhammad Shakir
through Mr. Zahid Hussain, Advocate.

Respondent No.2 : The General Manager, Ruknuddin Group of Companies. (Nemo).

Date of hearing : **26.02.2020**

Date of Decision : **18.05.2020**

JUDGEMENT

NAZAR AKBAR, J. The appellant through this IInd Appeal has challenged concurrent findings of two Courts below. The V-Senior Civil Judge, Central Karachi by Judgment dated **13.08.2009** decreed Civil Suit No.668/2005 filed by Respondents No.1 and IV-Additional District Judge, Central Karachi by Judgment dated **14.12.2011** dismissed Civil Appeal No.86/2009 filed by the appellant and maintained the findings of the trial Court.

2. Brief facts of the case are that Respondents No.1/ Plaintiff filed Civil Suit No.668/2005 for Specific Performance, Possession, Recovery of Mesne Profit, Permanent Injunction and Perpetual Mandatory Injunction against the appellant and Respondent No.2 in respect of a showroom bearing shop No.L-1/2, situated on Plot No.ST-8/A/2, Block-7, Abid Square, F.B Area, Karachi (the suit property). The background of the case is that the appellant was

introduced to Respondent No.1/ plaintiff by one Gulraiz and after sometime, he obtained undated cheque No.C.A/APM362013 from Respondent No.1/ Plaintiff on the pretext that he wanted to show the said cheque amount to satisfy his creditor who was forcing him for payment of loan amount Rs.340,000/- and promised that after arrangement of loan amount the appellant/defendant No.1 will return the said cheque to Respondent No.1/Plaintiff but inspite of requests the appellant failed to return the same to Respondent No.1. It is further averred that the appellant/ Defendant No.1 later on offered Respondent No.1/Plaintiff to start a partnership business of sale and purchase of new and old cars on 50% share basis. The proposal was accepted by Respondent No.1 and both have decided to purchase the suit property as a showroom on ownership basis with 50% share of each party. The appellant proposed to purchase the suit property for a total sale consideration of Rs.680,000/- and on **10.10.1996** Respondent No.1/ Plaintiff paid Rs.50,000/- to the owner of the said property namely Mst. Nadra Begum as advance and also paid a sum of Rs.150,000/- being his share for purchasing the shop/showroom. On **27.06.1999** Respondent No.1/Plaintiff handed over the charge of showroom to the appellant/Defendant No.1 with undertaking that he will give better result within three months but he failed to run the business successfully and converted the suit property into Marble Shop without consent/ permission of Respondent No.1/ Plaintiff and thereafter rented out the suit property to someone else, which was clear violation of appellant's undertaking/ promise and he even failed to give share of Respondent No.1 from the rental income of the suit property inspite of demands. Therefore, by consent they established a Jirga to resolve their dispute and both appointed members of Jirga by mutual consent. The Jirga

resolved the dispute through an Iqrarnama dated **11.07.2002** executed by both of them. According to the terms and conditions of said Iqrarnama, the value of the suit property was fixed at Rs.950,000/- and Respondent No.1/ Plaintiff had to pay Rs.825,000/- to the appellant/Defendant No.1 as Rs.125,000/- were adjusted in the price of the suit property. Respondent No.1 had to pay Rs.400,000/- on **13.07.2002** and the remaining amount had to be paid upto **02.8.2002** to the appellant through Jirga. Respondent No.1 paid Rs.400,000/- on **13.07.2002** to the Chairman/Leader of Jirga namely Raja Imam Ali, who paid the same to the appellant/Defendant No.1 and thereafter on **26.07.2002** Respondent No.1 tried to contact the appellant and said Raja Imam Ali for further payment, but one member of the Jirga namely Haji Abdul Rauf informed him that the appellant and said Raja Imam Ali had gone to Lahore and, therefore, Respondent No.1 paid Rs.100,000/- to the said member of Jirga Haji Abdul Rauf, who issued receipt and thereafter on **02.8.2002** Respondent No.1/Plaintiff paid the entire balance amount of **Rs.325,000/-** to Raja Imam Ali, Chairman of Jirga, who also issued receipt to him in presence of witnesses and after receiving the amount, the said Raja Imam Ali informed Respondent No.1 that the appellant is still in Lahore and assured that as soon as he will be returned, he will hand over possession of the suit property to Respondent No.1/Plaintiff. Later on the Chairman of Jirga Raja Imam Ali informed Respondent No.1/Plaintiff that the appellant/ Defendant No.1 had refused to fulfill his part of obligation and told him that he will not give possession of the suit property to leader of Jirga at any cost and offered Rs.100,000/- to Raja Imam Ali to leave the matter. Therefore, Respondent No.1 filed Civil Suit.

3. After service, the appellant/Defendant No.1 filed written statement wherein he denied all the allegations leveled against him. However, he admitted that Respondent No.1/Plaintiff and the appellant have jointly purchased the suit property for partnership business, but Respondent No.1 did not pay half of his share i.e Rs.340,000/- and requested him to accept an undated cheque of Rs.340,000/- with request to wait and get the cheque cashed after few weeks. The appellant/Defendant No.1 in good faith paid entire amount of sale consideration as well as other services and all the original documents of the suit property are lying with him. He further contended that at the time of handing over the suit property to Respondent No.1, the appellant/Defendant No.1 again asked Respondent No.1/Plaintiff as to when he should get the cheque of Rs.340,000/- credited in his account and also requested him to pay half of the share of Rs.85,000/- as well as Rs.50,000/- as half amount, to which Respondent No.1/Plaintiff requested him that the other share would be paid by him shortly, therefore, the appellant/ Defendant No.1 handed over possession of the suit property to Respondent No.1/ Plaintiff in good faith. He also admitted in written statement that on **11.4.2002** the disputed was settled by the Jirga and it was agreed that Respondent No.1/Plaintiff would pay a sum of Rs.950,000/- as consideration amount of the suit property to the appellant and an Iqrarnama was prepared wherein it was further agreed that if Respondent No.1/Plaintiff fails to pay the agreed amount, he would lose his right of partnership from the suit property and the business and his deposited advance amount of Rs.200,000/- will be forfeited and Respondent No.1/Plaintiff will waive and shall loose his right of ownership in the suit property and the appellant/

Defendant No.1 will be entitled to get sole title and right of ownership of the suit property. It was also admitted that on **13.7.2002** Respondent No.1 paid a sum of Rs.400,000/- but after payment of said amount, he violated the conditions of agreement and, therefore, lost his right and title of the suit property and the appellant/ Defendant No.1 by virtue of said Iqrarnama has become the sole and absolute owner of the suit property.

4. The trial Court from pleading of the parties has framed the following issues:-

1. Whether the suit is not maintainable?

2. Whether the defendant No.1 has failed to perform his part of obligation according to Iqrarnama dated 11.07.2002 and failed to deliver vacant possession of suit property in spite of the fact that plaintiff has fulfilled his part of obligation?

3. Whether the plaintiff is entitled for vacant possession of suit property i.e. shop No.L-1/2 constituted (constructed) on Plot No.ST-8/A/2, Block No.7 (Ground Floor) commonly known Abid Square Federal B Area Karachi?

4. Whether the plaintiff is entitled for mesne profit at the rate of Rs.15000/- per month from 27.06.1999 till possession of the suit property?

5. What should the decree be?

5. The trial Court after recording evidence and hearing learned counsel for the parties, decreed the suit filed by Respondents No.1 by judgment dated **13.08.20109**. The appellant against the said judgment filed Civil Appeal No.86/2009 before the appellate Court which was dismissed by judgment dated **14.12.2011** and the findings of the trial Court were maintained. The appellant has impugned both the judgments herein this IInd Appeal.

6. I have heard learned counsel for the parties and perused the record as well as written arguments filed by their learned counsel.

7. Learned counsel for the appellant while challenging the concurrent findings of facts based on the evidence led by the parties has failed to point out that the judgments of two courts below are contrary to law or that any material issue between the parties has been remained undecided by the two courts below. The execution of Iqrarnama dated **11.7.2002** between the appellant and Respondent No.1 and its contents are admitted by the appellant even in the written arguments and also by his own conduct as the appellant himself to take the advantage of said Iqrarnama has filed suit No.949/2002 wherein he has prayed that by virtue of the said Iqrarnama he has become sole and absolute owner of the suit property. To be exact in suit No.949/2002 the appellant has prayed as under:-

> Declare that the plaintiff (the appellant herein) is the sole owner and absolute owner of the property viz shop number L-1/2 of Abid Square bearing Plot No.ST-8/A/2, Block No.7, Federal "B" Area, Karachi by virtue of the Iqrar Nama executed by the defendant No.1 (Respondent No.1/Plaintiff in suit No.668/2005) on dated 11.07.2002 which is in full force and subsisting.

Appellant's suit was dismissed and he did not prefer any appeal against the dismissal of his own suit in respect of the suit property on the basis of Iqrarnama. In the suit subsequently filed by Respondent No.1, the appellant tried to disown the said Iqrarnama, however, by unimpeachable evidence of the witnesses namely Raja Imam Ali and Abdul Rauf, Chairman and Member of Jirga, the trail Court has concluded that since the entire amount of consideration in terms of Iqrarnama has already been paid by Respondent No.1, he is

entitled to the decree as prayed. Learned counsel for the appellant has not been able to point out any misreading and non-reading of evidence by the trial Court.

8. The contentions of learned counsel for the appellant that the suit filed by Respondent No.1 was time barred has been dealt with by both the Courts below and they have come to the conclusion from the record that the suit has been within time. The date of Iqrarnama is **11.07.2002** and the appellant himself has filed suit No.949/2002 on **04.11.2002** and, therefore, if not from the date of service of notice of suit No.949/2002, the date of presentation of suit by appellant i.e **04.11.2002** could be treated as starting point for limitation and admittedly Respondent No.1 has filed suit on **11.8.2005** within a period of three years from the date of denial of the appellant to perform his part of obligation under the Iqrarnama. The two judgments of the courts below are within the parameters of law for deciding the disputes between the parties and it cannot be said from reading of the two judgments that the lower courts have failed to decide any material issue between the parties or there was any irregularity or procedural defect in the proceedings. In fact the sole issue between the parties was regarding the entitlement of the suit property exclusively by one of them since the suit property was jointly purchased by them at the time when both wanted to run partnership business. The partnership has already been dissolved by conduct of the parties and the dispute was only about the ownership of the suit property. The dispute was resolved through an Arbitration/Jirga and the suits were filed by both the parties against each other for taking the benefit of decision of Jirga/Iqrarnama. The appellant's suit was dismissed and he did not prefer any appeal.

9. In view of the above facts and discussion, the instant IInd Appeal is dismissed being without merit. The appellant is enjoying possession of the suit property for more than twenty years in the name of pendency of stay during first and second appeal, therefore, he is directed to handover vacant peaceful possession of the suit property to Respondent No.1 within **30 days** from the date of announcement of this judgment without fail. In case of appellant's failure to handover possession, the trial Court already seized of Execution Application No.02/2012 shall issue writ of possession of the suit property with police aid and permission to break open the locks on completion of 30 days and hand over possession of the suit property to Respondent No.1 and submit compliance report to this Court through MIT-II for perusal in Chamber.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul